U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

INDEX

File: A72 730 337 - Baltimore Date: MAR 21 1996

In re: YASSER MOHAMMED-HASSAN SULEIMAN-ALI, Beneficiary of visa petition filed by ELIZABETH DRISCOLL SULEIMAN, Petitioner

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF SERVICE: Jennifer S. Goldmeier
Assistant District Counsel

APPLICATION: Petition to classify status of alien relative for issuance of immigrant visa

The United States citizen petitioner applied for immediate relative status for the beneficiary as her spouse under section 201(b) of the Immigration and Nationality Act, 8 U.S.C. § 1151(b). On April 12, 1995, the acting district director (ADD) denied the visa petition because the petitioner failed to submit evidence of the dissolution of the beneficiary's previous marriages. The petitioner has appealed. The request for oral argument before the Board is denied. 8 C.F.R. § 3.1(e) (1995). The appeal will be dismissed.

As a threshold matter, we address the issue of our jurisdiction over this appeal and the applicability of certain regulations. In his notice denying the visa petition, the ADD invoked 8 C.F.R. § 103.2(b)(13) (1995) which provides that if a petitioner fails to respond to a request for evidence, the petition will be considered abandoned and shall be denied. We note that under the terms of section 103.2, a denial due to abandonment may not be appealed, and that the priority or processing date of the application is lost. 8 C.F.R. § 103.2(b)(15) (1995). The ADD informed the petitioner that her only avenue for review of his decision was by way of a motion to reopen, accompanied by the appropriate fee. See 8 C.F.R. § 103.5(a) (1995). 1/ On appeal, the Immigration and Naturalization Service argues that this interpretation of the regulations is correct, and that because the regulations provide no avenue for appeal, we have no jurisdiction over the case.

1/ Despite the ADD's language foreclosing an appeal, the denial was forwarded to the petitioner with a cover letter directing her to file any appeal with the Board. The Service has adopted the position that the cover letter was inaccurate.

We disagree with the Service's position that we do not have jurisdiction over the petitioner's appeal. Regulations at 8 C.F.R. § 3.1(b) cover our appellate jurisdiction. That jurisdiction includes "[d]ecisions on petitions filed in accordance with section 204 of the act." 8 C.F.R. § 3.1(b)(5) (1995). Moreover, decisions of this Board are binding on all officers and employees of the Service in the administration of the Immigration and Nationality Act. 8 C.F.R. §§ 2.1, 3.0, 3.1(g) (1995); see also United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954) (discussing the duty of the Board to exercise its own independent judgment where the Attorney General has, by regulation, delegated this responsibility to the Board). Where our delegated authority has not been specifically revoked or amended by regulation, it remains in force. See United States v. Nixon, 418 U.S. 683, 695-96 (1974). There have been no proposed or enacted regulations directed to the Board by the Attorney General that remove our jurisdiction over the petitioner's appeal, or over similar appeals. Thus, our exercise of jurisdiction over this matter must be regarded as proper under the applicable regulations, unless and until the Attorney General directs otherwise.

The petitioner is a 33-year-old United States citizen. The beneficiary is a 32-year-old native and citizen of Saudi Arabia. The couple married on July 13, 1993. They have a 3-year-old daughter.

The visa petition was filed on October 12, 1993. 2/ The petition noted that the beneficiary had been married twice before. In support of the petition, the petitioner submitted the following documents: a photocopy of the petitioner's birth certificate; a photocopy of the Mexican divorce decree that dissolved the marriage between the beneficiary and his second wife; a photocopy of a "Petition to Enroll/File Foreign Divorce Decree" in Maryland filed by the beneficiary's second wife; a photocopy of the divorce decree that dissolved the marriage of the petitioner and her former husband; a photocopy of a marriage certificate issued to the petitioner and the beneficiary; a letter from the petitioner's mother attesting to the validity and strength of her daughter's and son-in-law's marriage; letters from a friend of the couple and from the petitioner's employer attesting to the validity of the marriage; a change-of-name letter from the Internal Revenue Service showing that the petitioner adopted the beneficiary's surname; photocopies of driver licenses from Maryland showing that

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2/ An Application to Register Permanent Residence or Adjust Status (Form I-485) was filed by the beneficiary on the same day.

the couple lives together; a photocopy of a 1993 joint tax return; a photocopy of a birth certificate for the couple's daughter; and photographs of the petitioner and the beneficiary together.

On November 15, 1994, the beneficiary and the petitioner were interviewed by an officer from the Service. On November 28, 1994, the ADD sent the petitioner a letter requesting further information regarding the dissolution of the beneficiary's former marriages, specifically, the original divorce decree from Mexico and the death certificate from his first wife. She was warned that "failure to comply . . . may result in denial" of the petition. The petitioner did not submit the documents, and on April 12, 1995, the ADD denied the petition.

On appeal, the petitioner argued that the Service has been inconsistent in its requests for documents concerning the dissolution of the beneficiary's prior marriages. The petitioner informed the Service at the initial visa petition interview that the beneficiary's first wife was killed in Lebanon in 1982. The Service agent told her that she would have to obtain either a death certificate from Lebanon or a foreign divorce from Maryland. The agent also told the couple that their copy of the Mexican divorce decree from the beneficiary's second marriage was unacceptable, and that they would have to obtain a foreign divorce from Maryland for that marriage as well. At the November 15, 1994, interview, the petitioner states that the Service agent told them the Service would only accept a death certificate from Lebanon and a divorce decree from Maryland. She expressed frustration at the Service's inconsistency, and emphasized that she is attempting to obtain all the necessary documents despite her limited income.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefits sought. Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966). When petitioning for a spouse under section 201(b) of the Act, 8 U.S.C. § 1151(b), a petitioner must submit "proof of the legal termination of all previous marriages." 8 C.F.R. § 204.2(a)(2) (1995).

Although the Service has not responded to the petitioner's allegations of inconsistency, we do not find the statements of the Service agents to be misleading. The petitioner has been on notice throughout the visa petition process that she needed to provide documentation regarding the dissolution of her husband's previous marriages. Her efforts to obtain either a death certificate or a foreign divorce from the beneficiary's first wife may have been sincere, but have been unfruitful, and therefore, she has been unable to satisfactorily establish the dissolution of that marriage. We also find that the petitioner has failed to establish the validity of the dissolution of the beneficiary's

second marriage. The state of Maryland does not recognize divorces from foreign countries where the foreign country had no jurisdiction over the parties. Wolf v. Wolf, 389 A.2d 413, 418-19 (Md. Ct. Spec. App. 1978). Whether the Mexican court properly had jurisdiction over the beneficiary and his second wife is a matter of foreign law. The law of a foreign country is a question of fact that the petitioner must prove if she relies upon it to establish eligibility for an immigration benefit. Matter of Annang, 14 I&N Dec. 502 (BIA 1973). The petitioner has not submitted such proof.

While we are sympathetic to the petitioner, and recognize that she continues to make efforts to provide the required documentation, we cannot find that, at present, her petition can be granted. Accordingly, the appeal will be dismissed. However, we note that the denial of the visa petition and the dismissal on appeal do not prejudice the filing of another petition.

ORDER: The appeal is dismissed.

Mary Maguire Dunne
FOR THE BOARD